NMDPS - MIRANDA AND THE BIBLE

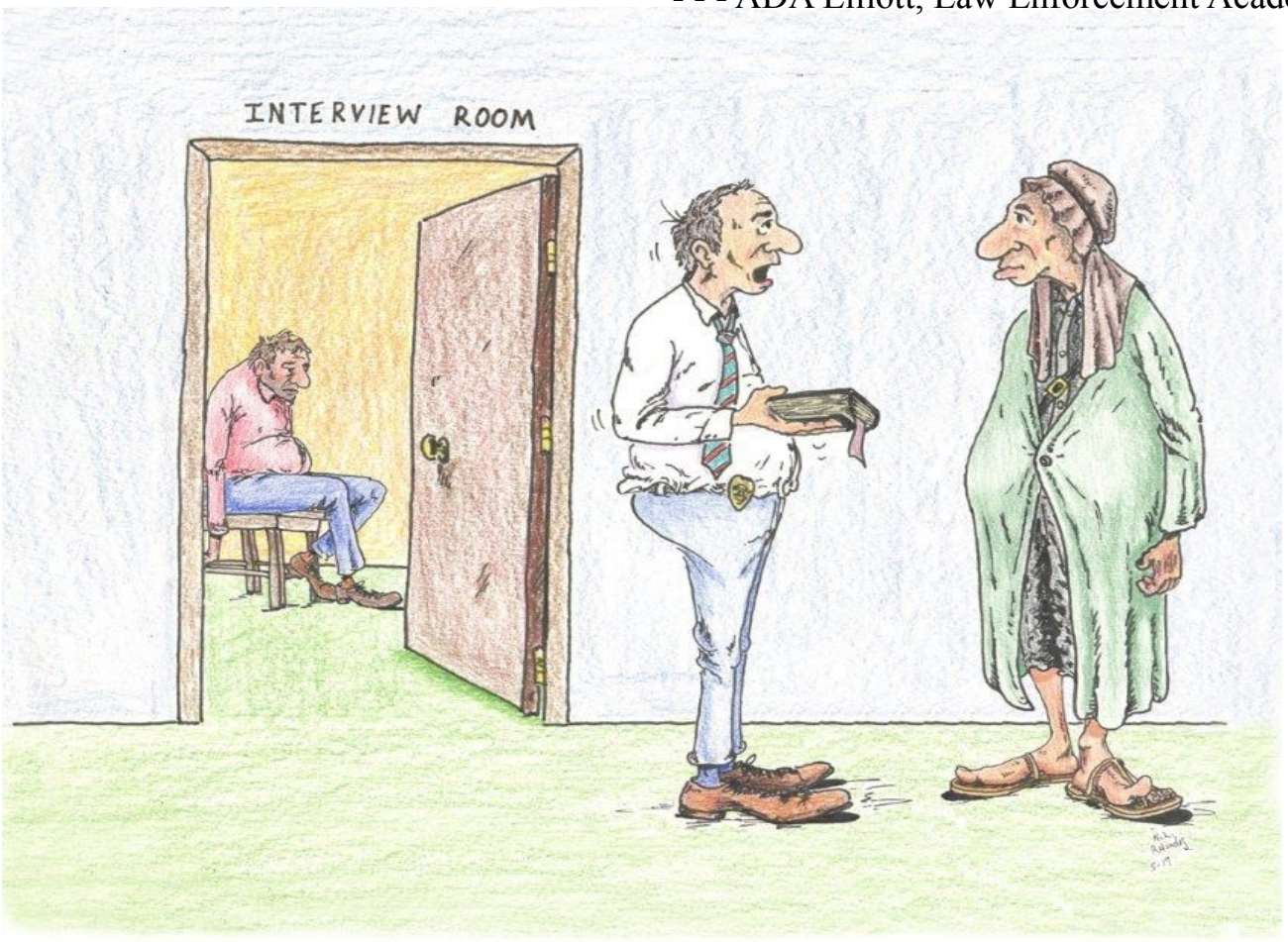
After State Police officers read Defendant his Miranda rights, he replied, "I would like a lawyer," and "I don't have anything to say." At this point all questioning must cease. This means not only express questioning but any words or actions that are reasonably likely to elicit an incriminating response.

The officers continued, appearing to engage in small talk. Actually, they had a well-thought out plan, cleverly rehearsed. They knew Defendant was religious and had been asking for his own well-marked bible. One officer put a manila envelope on the desk and took out – here it comes – Defendant's Bible!

The officers began talking religion – what's your favorite verse? They looked at his Bible and said it's important to tell the truth. We would love to hear what happened. Miranda was read again. The plan to get incriminating statements was highly successful. Not only did Defendant admit to two homicides in Tucumcari but also two more in Ohio!

Several rules had been broken. Once rights are invoked, questioning must cease. It's not time to play the religious angle or any other angle to get a confession. This was a persistent, repeated effort to wear down the defendant. Supreme Court suppressed his statements. State v. Madonda (2016).

- - - ADA Elliott, Law Enforcement Academy



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Legal Update
New Mexico Department of Public Safety - Office of Legal Affairs

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The 2017 Legislative Session

We wanted to take a moment to update everyone about some of the changes, and some things that did not change, from the 2017 Legislative Session.

Most significantly, we had expected that the Legislature would address the constitutional problems created for law enforcement agencies under the New Mexico Implied Consent Act (ICA) by the United State Supreme Court's opinion in *Birchfield v. North Dakota, 136 S. Ct. 2160 (June 23, 2016). Birchfield* impacts the ICA because it held that consent to a blood test for criminal DWI or DUID purposes cannot be implied from use of the State's roadways. The existing ICA implies consent to both breath and blood tests. *Birchfield,* however, focused on the more intrusive nature of blood tests, and created additional protection. It said implied consent was appropriate for a breath test, but if that test is refused, then the officer is required to get a warrant to obtain a blood test if one seems necessary. That creates a major problem for New Mexico law enforcement, though, because the ICA currently limits availability of warrants to felony DWIs, either because of three prior convictions or because there is probable cause to believe that the driver was intoxicated and that he or she caused great bodily injury or death. Search warrants are not legally permitted for misdemeanor DWI cases.

There were bills submitted to address the new issue, but they failed to pass. So, while there is no implied consent to draw blood for a blood test for use in criminal cases, *Birchfield* did find that consent is still implied for breath tests. With that in mind, the DPS Office of Legal Affairs continues to advise that the best course is to charge impaired individuals with aggravated DWI for breath test refusals. For individuals that have signs of impairment that do not match the breath test results (for example, they fail the SFSTs and blow a .00), and they are unable to get a warrant, NMSP officers can still charge the individual with impaired driving based upon the field sobriety test results. Additionally, consent to blood tests can still be implied for **civil purposes.** Therefore, administrative license revocation for refusal to submit to either a breath or a blood test is allowed. *State v. Laressa Vargas* (New Mexico Court of Appeals, October 25, 2016). So, the results of any request should still be documented.

The NMSP was provided new Implied Consent advisory cards that have been in use, and will help avoid the errors that would occur if the ICA is enforced as it is currently written.

Additional legislative action that will be of interest to law enforcement includes:

HB 12 – The magistrate courts in Questa and Quemado are permanently closed, and their cases will be handled out of the Taos and Reserve Magistrate Courts.

SB 76 – Requires drivers to move away from the lane adjacent to, or slow down if they can't move away from, stationary "repair or recovery vehicles" (tow trucks) displaying flashing emergency or hazard lights. Enforcement would be the same as for emergency vehicles. The law also prohibits the use of red flashing lights by repair or recovery vehicles. Only fire and law enforcement vehicles, ambulances and school buses may display flashing red lights that are visible from the front of the vehicle.

HB 110 - Allows any law enforcement officer to serve municipal court process or make any arrests allowed in the county in which the municipal court sits, and adjacent counties, except for parking violations in adjacent counties.

HB 370 – State and local law enforcement agencies will be required to provide naloxone (an opioid antagonist used to counteract opioid drug overdoses) rescue kits to officers if funding permits. The same statute applies to corrections facilities, and requires inmates diagnosed with an opioid use disorder be provided naloxone and training. Again, key phrase here may be "if funding permits."

HB 9 – The LEA and its satellite academies will be required to train officers on the use of, and must distribute, tourniquet and trauma kits statewide. The kits have been delivered to the LEA, and the LEA is working on the logistics of training and distribution. More details can be found elsewhere in this newsletter.